

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

MARCELA ELIZABETH LOPEZ ROCHE,

Case No. 1:24-cv-00183-EPG

Plaintiff,

V.

MARTIN O'MALLEY¹, Commissioner of
Social Security,

STIPULATION FOR THE AWARD AND
PAYMENT OF ATTORNEY FEES AND
EXPENSES PURSUANT TO THE EQUAL
ACCESS TO JUSTICE ACT; ORDER

(ECF No. 23)

Defendant.

IT IS HEREBY STIPULATED by and between the parties through their undersigned counsel, subject to the approval of the Court, that Plaintiff be awarded attorney fees and expenses in the amount of SEVEN THOUSAND TWO HUNDRED-SIXTEEN 29/100 (\$7,216.29) under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), and costs in the amount of ZERO dollars (\$0.00) under 28 U.S.C. §1920. This amount represents compensation for all legal services rendered on behalf of Plaintiff by counsel in connection with this civil action, in accordance with 28 U.S.C. §§ 1920, 2412(d).

Plaintiff was the prevailing party in this matter and Plaintiff is an individual whose net worth does not exceed \$2,000,000 at the time the civil action was filed. The position of the Commissioner was not substantially justified and an award of fees is not unjust.

¹ Martin O’Malley became the Commissioner of Social Security on December 20, 2023. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Martin O’Malley should be substituted for Kilolo Kijakazi as the defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

After the Court issues an order for EAJA fees to Plaintiff, the government will consider the matter of Plaintiff's assignment of EAJA fees to Plaintiff's attorney. Under Astrue v. Ratliff, 130 S. Ct. 2521, 2528-29 (2010), EAJA fees awarded by this Court belong to the Plaintiff and are subject to offset under the Treasury Offset Program (31 U.S.C. § 3716(c)(3)(B) (2006)). Any EAJA fees should therefore be awarded to Plaintiff and not to Plaintiff's attorney. If, after receiving the Court's EAJA fee order, the Commissioner (1) determines that Plaintiff has assigned his right to EAJA fees to his attorney; (2) determines that Plaintiff does not owe a debt that is subject to offset under the Treasury Offset Program, and (3) agrees to waive the requirements of the Anti-Assignment Act, then the EAJA fees will be made payable to Plaintiff's attorney. However, if there is a debt owed under the Treasury Offset Program, the Commissioner cannot agree to waive the requirements of the Anti-Assignment Act, and the remaining EAJA fees after offset will be paid by a check or electronic fund transfer (EFT) made out to Plaintiff, but delivered to Plaintiff's attorney.

This stipulation constitutes a compromise settlement of Plaintiff's request for EAJA attorney fees, and does not constitute an admission of liability on the part of Defendant under the EAJA or otherwise. Payment of the agreed amount shall constitute a complete release from, and bar to, any and all claims that Plaintiff and/or Counsel including Counsel's firm may have relating to EAJA attorney fees in connection with this action.

The parties further agree that the EAJA award is without prejudice to the right of Plaintiff's attorney to seek attorney fees pursuant to Social Security Act § 206(b), 42 U.S.C. § 406(b), subject to the offset provisions of the EAJA. *See* 28 U.S.C. § 2412(c)(1) (2006).

Respectfully submitted,

Dated: October 22, 2024

/s/ *Jonathan O. Peña*

JONATHAN O. PEÑA
Attorney for Plaintiff

Dated: October 22, 2024

PHILLIP A. TALBERT
United States Attorney
MATHEW W. PILE
Associate General Counsel
Office of Program Litigation
Social Security Administration

1 By: * Michael J. Mullen
2 Michael J. Mullen
3 Special Assistant U.S. Attorney
4 Attorneys for Defendant
5 (*Permission to use electronic signature
6 obtained via email on October 22, 2024).
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ORDER

Based upon the parties' Stipulation for the Award and Payment of Equal Access to Justice Act Fees and Expenses (ECF No. 23), **IT IS ORDERED** that fees and expenses in the amount of SEVEN THOUSAND TWO HUNDRED-SIXTEEN 29/100 (\$7,216.29) as authorized by the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), is awarded subject to the terms of the Stipulation.

IT IS SO ORDERED.

Dated: October 23, 2024

/S/ Eric P. Groij

UNITED STATES MAGISTRATE JUDGE